

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:)	
)	
LAN NGOC PHAM)	Case No. 857-A
14645 Serron Avenue)	
Irvine, CA 92714)	
)	
Civil Engineer License No. C 29595)	
Geotechnical Engineer License No. GE 686,)	
)	
Respondent.)	
_____)	

DECISION

The attached Stipulated Settlement for Public Reprimand is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on December 24, 2010.

IT IS SO ORDERED November 17, 2010.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 857-A

12 **LAN NGOC PHAM**
13 **14645 Seron Avenue**
14 **Irvine, CA 92714**

STIPULATED SETTLEMENT
FOR PUBLIC REPROVAL

15 **Civil Engineer License No. C 29595**
Geotechnical Engineer License No. GE 686

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional
22 Engineers and Land Surveyors. He brought this action solely in his official capacity and is
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by Karen L. Gordon, Deputy Attorney General.

25 2. Lan Ngoc Pham (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.
27
28

3. On or about July 12, 1978, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C 29595 to Lan Ngoc Pham (Respondent). The license was in full force and effect at all times relevant to the charges brought in Accusation No. 857-A and will expire on March 31, 2011, unless renewed.

4. On or about September 9, 1987, the Board for Professional Engineers and Land Surveyors issued Geotechnical Engineer License No. GE 686 to Lan Ngoc Pham (Respondent). The Geotechnical Engineer license was in full force and effect at all times relevant to the charges brought in Accusation No. 857-A and will expire on March 31, 2011, unless renewed.

JURISDICTION

5. Accusation No. 857-A was filed before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 27, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 857-A is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read and understands the charges and allegations in Accusation No. 857-A. Respondent has also carefully read and understands the effects of this Stipulated Settlement for Public Reproval.

7. Respondent understands the nature of the charges alleged in Accusation No. 857-A and that said charges and allegations, if proven at hearing, would constitute cause for imposing discipline upon his licenses to practice civil and geotechnical engineering.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and

1 court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 9. With these rights in mind, Respondent hereby freely, voluntarily, and knowingly
4 waives and gives up each and every right set forth above including, but not limited to, the right to
5 a hearing on the charges and allegations contained in Accusation No. 857-A and the right to
6 reconsideration and judicial review, in order to enter into this Stipulated Settlement. Respondent
7 understands that, in signing this Stipulated Settlement rather than contesting the Accusation, he is
8 enabling the Board to issue its order without further process.

9 10. All agreements regarding facts and conclusions of law contained in this Stipulated
10 Settlement are made exclusively for this proceeding and for any future proceedings between the
11 Board and Respondent, or between Respondent and any other licensing agency in the State of
12 California, and shall not be deemed to be admissions for any purpose in any other administrative,
13 civil or criminal action, forum or proceeding.

14 11. Respondent's license history and status as set forth in paragraphs 3 and 4 of the
15 Accusation are true and correct. Respondent's address of record is current and accurate as set
16 forth in the caption of this Stipulation.

17 12. For the purpose of settlement and compromise of the instant proceeding before the
18 Board only, and not for any other purpose in any other civil or criminal matter, except in
19 proceedings before the Board of Professional Engineers and Land Surveyors or any other
20 professional licensing agency in the State of California, Respondent stipulates that the Board has
21 jurisdiction to impose a public reproof upon his license to practice engineering pursuant to
22 section 495 of the Business and Professions Code.

23 13. It is stipulated and agreed that Civil Engineering License No. C 29595 and
24 Geotechnical Engineer License No. GE 686 issued to Respondent shall, by way of letter from the
25 Executive Officer, be publicly reproofed. Said letter of public reproof will issue as set forth
26 above and shall be in substantially the same form as the sample letter attached hereto as Exhibit
27 B.

28 ///

1
2 14. In consideration for entering into this Stipulated Settlement, Respondent hereby
3 waives any right to challenge the legal effect of this Stipulated Settlement, by way of petition for
4 reconsideration, petition for writ of mandamus, appeal, or otherwise, and further waives any other
5 legal claim or defense, which he may have asserted, including, but not limited to, any time based
6 claim such as laches, in the event it is necessary to re-calendar an administrative hearing based on
7 any part of or all of Accusation No. 857-A.

8
9 15. The within Stipulated Settlement shall be subject to the approval of the Board or
10 its Designee. After Respondent has signed the Stipulation, he shall not be permitted to withdraw
11 from the Stipulation unless and until it has been rejected by the Board. If the Board or its
12 Designee fails to approve this Stipulated Settlement, it shall be of no force or effect for either
13 party.

14
15 16. In consideration of the foregoing stipulations, the parties agree that the Board may,
16 without further notice or formal proceeding, issue and enter the following Order:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED as follows:

19 A Public Reproval shall be issued to Respondent Lan Ngoc Pham, Civil and Geotechnical
20 Engineer License Nos. C 29595 and GE 686. It is further ordered that Respondent shall complete
21 the following requirements:

22 A. Within two (2) years from the effective date of the decision, Respondent shall
23 successfully reimburse the Board for its investigative and enforcement costs in the amount of
24 \$500.00.

25 B. Within two (2) years from the effective date of the decision, Respondent shall
26 successfully complete and pass, with a grade of "C" or better, one (1) college-level course,

27 ///

28 ///

To: Karen L. Gordon

1 related to soils engineering, promptly approved in advance by the Board or its designee.

2 Respondent shall provide the Board with verifiable proof of his successful completion said
3 course.

4 C. This Order for Public Repeval, as a resolution to the charges in Accusation No.
5 857-A, is contingent upon Respondent's full compliance with all conditions of this Order. If
6 Respondent fails to satisfy these conditions, the Board can file a supplemental Accusation for
7 unprofessional conduct based upon his failure to comply with this Order as an independent basis
8 for disciplinary action pursuant to Business and professions Code section 6775, and reinstate the
9 original Accusation as if never resolved. The Board will be entitled to proceed against
10 Respondent on both the original Accusation and a supplement Accusation based upon his failure
11 to comply with this Order.
12

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement. I understand the stipulation and the
15 effect it may have on my Civil and Geotechnical Engineer's Licenses. I enter into this Stipulated
16 Settlement voluntarily, knowingly, and intelligently. I further agree that a facsimile copy of this
17 Stipulated Settlement including facsimile copies of signature, may be used with the same force
18 and effect as the originals.
19

20 DATED:

9-20-2010

Original Signed

21 LAN NGOC PHAM
22 Respondent
23
24
25
26
27
28

1 **ENDORSEMENT**

2 The foregoing Stipulated Settlement is hereby respectfully submitted for consideration by
3 the Board for Professional Engineers and Land Surveyors of the Department of Consumer
4 Affairs.

5 Dated: 9-20-10
6

Respectfully Submitted,

7 EDMUND G. BROWN JR.
Attorney General of California
8 JAMES M. LEDAKIS
Supervising Deputy Attorney General

9 *Original Signed*

10 KAREN L. GORDON
11 Deputy Attorney General
12 *Attorneys for Complainant*

13 SD2009803586
14 70350532.docx
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Accusation No. 857-A

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant

9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 857-A

13 **LAN NGOC PHAM**
14645 Serron Avenue
14 Irvine, CA 92714

A C C U S A T I O N

15 **Civil Engineer License No. C 29595**
16 **Geotechnical Engineer License No. GE 686**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Arnold (Complainant) brings this Accusation solely in her official capacity as
21 the Interim Executive Officer of the Board for Professional Engineers and Land Surveyors,
22 Department of Consumer Affairs.

23 2. On or about July 12, 1978, the Board for Professional Engineers and Land Surveyors
24 issued Civil Engineer License Number C 29595 to Lan Ngoc Pham (Respondent). The license
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 March 31, 2011, unless renewed.

27 3. On or about September 9, 1987, the Board for Professional Engineers and Land
28 Surveyors issued Geotechnical Engineer License Number GE 686 to Lan Ngoc Pham

(Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 6749 of the Code states, in pertinent part:

(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

...

(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

6. Section 6775 of the Code states, in pertinent part:

The board may receive and investigate complaints against registered professional engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

..

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

7. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

///

///

///

REGULATORY PROVISIONS

8. Section 419 of the Title 16, California Code of Regulations states:

For violations of Business and Professions Code sections 6775 and/or 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional engineering and/or a professional land surveying license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include . . . probationary conditions:

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

10. On February 28, 2006, the Board received a complaint against Respondent, a licensed civil engineer and a licensed geotechnical engineer, working as Director of Geotechnical Engineering for Peter and Associates in San Clemente, California. The complaint alleged that Respondent falsified an August 3, 2005 soils report regarding a residence in Laguna Niguel to accommodate the homeowner. The complaint also alleged that Respondent placed adjacent residential neighborhood properties in jeopardy by his actions as no subsurface work was performed to determine the soil conditions and the site was underlain by fill soils instead of Capistrano Formation bedrock as Respondent's report stated. The complaint further alleges that Respondent did not evaluate the existing foundation or mention the proposed second story addition, which was necessary to determine if the existing foundation was capable of supporting the new load of a second story.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Negligence or Incompetence)

3 11. Respondent is subject to disciplinary action under Code section 6775(c) for
4 incompetence and work below the standard of practice with regard to the August 3, 2005
5 geotechnical recommendations report for the Sadeghi Residence. Respondent failed to perform a
6 feasibility study to identify potential geotechnical concerns and constraints. Respondent failed to
7 perform a subsurface evaluation or search for past grading reports for the property tract and other
8 construction reports. Respondent stated that the existing structure was founded in bedrock
9 materials when it was underlain by fill. Respondent misinterpreted the height of the existing
10 slope. Respondent did not substantiate his opinions regarding settlement and slope creep with
11 data. Respondent failed to include a slope/foundation setback as required by the building code.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Failure to Include Necessary Information)

14 12. Respondent is subject to disciplinary action under Code section 6749(a)(3) for failure
15 to include necessary information when he failed to include his name and license numbers as the
16 responsible Professional Engineer for Peters and Associates on the Sadeghi Residence project
17 report.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
21 decision:

- 22 1. Revoking or suspending Civil Engineer License Number C 29595 issued to Lan Ngoc
23 Pham.
- 24 2. Revoking or suspending Geotechnical Engineer License Number GE 686, issued to
25 Lan Ngoc Pham.
- 26 3. Ordering Lan Ngoc Pham to pay the Board for Professional Engineers and Land
27 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
28 Business and Professions Code section 125.3;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/18/09

Original Signed

JOANNE ARNOLD
Interim Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

SD2009803586
80361082.doc